

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.R. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CHRISTINA R.,

Defendant and Appellant.

D070066

(Super. Ct. No. NJ11058BCD)

APPEAL from a judgment of the Superior Court of San Diego County,
Kimberlee A. Lagotta, Judge. Affirmed.

Suzanne M. Davidson, under appointment by the Court of Appeal, for
Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy
County Counsel, and J. Jeffrey Bitticks, Deputy County Counsel, for Plaintiff and
Respondent.

Katherine F. Hart for Minors.

I.

INTRODUCTION

Christina R. (Christina) appeals a judgment terminating her parental rights to her children, J.R., A.R., and Al.R. Christina contends that the trial court erred by failing to apply the beneficial relationship exception to the termination of parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)¹ We affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The children's initial detention*

On June 9, the San Diego County Health and Human Services Agency (Agency) filed petitions on behalf of J.R., A.R., and Al.R. pursuant to section 300, subdivision (b). The petitions stated that J.R. was 9 years old, A.R. was 8 years old, and Al.R. was 2 years old. In the petitions, the Agency alleged that there was a substantial risk that each child would suffer serious physical harm or illness due to Christina's failure to adequately supervise or protect the children. Each petition alleged that "the child was exposed to violent confrontations in the family home between [Christina's] boyfriend, [J.G.], and another adult male involving the use of force and deadly weapons in that they began physically fighting in the child's presence and the adult male sustained a severe laceration caused by [J.G.] on his

¹ Unless otherwise specified, all subsequent statutory references are to the Welfare and Institutions Code.

lower leg." The petitions also alleged that, after the incident, Christina left the residence with J.G. and "denied/minimized" any domestic violence upon returning. In addition, the petitions alleged that J.G. had perpetrated domestic violence on Christina on recent occasions and that J.G. was found residing in the family home on June 5, placing each child at risk.

The Agency filed a detention report the following day that provided additional details concerning both the incident involving J.G. and the adult male as well as domestic violence perpetrated by J.G. upon Christina. Among other details, J.R. told investigators that J.G. had stabbed a man at the family home and then left the home with Christina.² Christina later returned to the family home without J.G., but J.G. returned a few days after the stabbing. When J.G. arrived at the home, J.R. went to a neighbor's house and called the police. The police came and took J.G. into custody. Christina was upset with J.R. calling the police, threatened to "beat [J.R.] to the ground," and told her that "it would be her fault if [the Agency] took her." Christina bailed J.G. out of jail and J.G. returned to the family home the following day.

J.R. also reported seeing J.G. hitting Christina and seeing J.G. using drugs in the family home. In addition, J.G. stated that she saw Christina and J.G. weighing "green stuff" that J.G. smokes, and then providing the "green stuff" to other people.

² The detention report also includes police reports from the stabbing incident, indicating that the stabbing occurred on May 24.

The court held a detention hearing that same day. At the hearing, the court made a prima facie finding on the petition and detained all three children in out-of-home care.

B. Reunification efforts

In June 2014, the Agency placed the children with foster caregivers, with whom they remained through the dependency proceedings. The Agency provided Christina with liberal supervised visitation, but throughout the reunification period, Christina "attended visits sporadically and was often late." In addition, Christina did not fully participate in a parenting program, either missing classes or falling asleep in sessions, became confrontational with her adult daughter who was supervising her visits with J.R., A.R., and Al.R., and did not consistently attend individual therapy sessions.

In August 2015, at the 12-month hearing, the trial court found that Christina had not made substantive progress with her case plan, terminated services and set the case for a section 366.26 hearing.

C. The section 366.26 reports

In a section 366.26 report dated December 8, 2015, the Agency recommended that Christina's parental rights be terminated and that the court establish adoption as the permanent plan for J.R., A.R., and Al.R. In the report, the Agency stated that Christina had her parental rights to another child terminated, had permitted the children to be exposed to violence in the family home, had substance abuse problems,

and had recently been incarcerated.³ The report described the "strides [the children had made] in their academic and emotional development" since their placement out of Christina's care. In addition, the report stated that Christina had maintained only "sporadic visitation" with the children prior to her incarceration in August 2015 and that the relationship between the children and Christina did "not rise to the level of a parent-child relationship."

In an addendum report filed on March 15, 2016, the Agency summarized and attached a bonding study completed in February 2016. The report of the bonding study stated that the children were "thriving in their current placement," and concluded that severing Christina's parental relationship would be "neutral" for J.R. The report further concluded that A.R. "needs a father, not just a male figure," and that Al.R. could become more bonded with her foster mother than with Christina due to her young age. The March 15 addendum also described a visit between Christina and Al.R.⁴ in February 2016 while Christina remained incarcerated. The report stated that Christina informed the Agency that she had been released from jail to a residential treatment program in March 2016.

³ The report indicates that Christina was being held on charges of possession of unlawful drug paraphernalia, failure to appear, and grand theft.

⁴ The report indicated that J.R. stated that she did not want to attend the visit and that J.R. tearfully told the Agency social worker that it made her sad to see her mother in jail. A.R. said that he did not want to attend the visit if J.R. would not attend.

D. The section 366.26 hearing

The trial court held a section 366.26 hearing on March 15, 2016. At the hearing, the court received in evidence the December 8 and March 15 section 366.26 reports and a December 8, 2015 report from a court appointed special advocate (CASA). In addition, Agency social worker Reycha Webb testified at the hearing. Webb stated that the children's placement was going "very well, and the children are happy in their home." Webb had visited with the children and their caregivers on approximately 10 occasions. Webb also supervised six visits between the children and Christina while Christina was incarcerated. Webb stated that J.R. appeared to be "parentified," in that she "often checks on [Christina's] well-being and also attends to the needs and the well-being of her siblings." Webb considered this to be emotionally detrimental to J.R. According to Webb, during the visits with Christina, A.R. was reserved and did not "really speak much," while Al.R. was "very appropriate and friendly." Webb stated that the children referred to Christina as "mom" or "mommy," but that they also referred to their caregivers as "mama" and "papa" (Al.R.) or "mom" and "dad" (J.R. and A.R.).

Webb stated that the caregivers had a "loving and nurturing relationship" with the children, and provided for their primary daily needs. Webb also stated that the caregivers intended to adopt the children and that Webb did not envision any reason why they would not be able to do so. Webb agreed that the children were "thriving in [their] placement," explaining:

"When the children were first placed, [J.R.] had some health issues, where she was considered to be overweight. [A.R.] was behind in several grade reading levels. And [Al.R.] was not verbal at the time.

"Since being in their placement, [J.R.] has learned more healthier [*sic*] ways to eat and has been continuously working on her self-esteem and self-image and making healthier choices.

"[A.R.] has gotten up to grade level in his reading. He takes pride in his schoolwork, and he receives a lot of support from his caregivers.

"And [Al.R.] speaks very well now. And they're all provided with enriching activities on a daily basis."

Minors' counsel offered J.R. and A.R.'s stipulated testimony. J.R. testified, "I want to be adopted by my foster family," and A.R. testified, "I, a little bit, want my foster family to legally become my parents."⁵

Christina's counsel offered evidence that she was currently in a residential treatment program for alcohol and substance abusing women and that she had completed parenting and anti-theft classes.

The court found that it was likely that the children would be adopted if parental rights were terminated. As discussed in detail below (see pt. III.B, *post*), the court further found that the beneficial relationship exception to the termination of parental rights did not apply. Accordingly, the court terminated Christina's parental rights to J.R., A.R., and Al.R.

⁵ The court did not receive testimony from Al.R., who was four years old at the time of the section 366.26 hearing. The court did receive the bonding study in evidence, which stated that "when queried as to where she wants to live[,] [Al.R.] says her foster family."

E. *The appeal*

Christina filed a timely notice of appeal from the judgment terminating her parental rights to the children.⁶

III.

DISCUSSION

The trial court did not err when it found that the beneficial parent-child relationship exception did not apply in terminating Christina's parental rights

Christina claims that the trial court erred in finding that the beneficial parent-child relationship exception did not apply to preclude the termination of her parental rights to J.R., A.R., and Al.R.

A. *Governing law and standard of review*

If a dependent child is adoptable, the court must terminate parental rights at the section 366.26 hearing unless the parent proves the existence of a statutory exception to adoption. (§ 366.26, subd. (c)(1).) An exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Id.*, subd. (c)(1)(B)(i).) "A parent asserting the parental benefit exception has the burden of establishing that exception by a preponderance of the evidence." (*In re J.C.* (2014) 226 Cal.App.4th 503, 529.)

With respect to the visitation prong, "regular visitation exists where the parents visit consistently and to the extent permitted by court orders." (*In re I.R.* (2014) 226

⁶ Christina named different men as alleged fathers of each of the children, but none was determined to be a biological or presumed father of any of the children during the dependency proceedings. Christina is the only appellant on appeal.

Cal.App.4th 201, 212.) The lack of regular visitation "fatally undermine[s] any attempt to find the beneficial parental relationship exception." (*Ibid.*)

This court has interpreted "the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

We review a trial court's finding as to whether "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship" for substantial evidence (§ 366.26, subd. (c)(1)(B)(i)). (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.)

B. *Application*

In finding that the beneficial relationship exception did not apply, the trial court stated that "all in all, over the two-year period [since the beginning of the dependency proceedings], mother's visits have been arguably regular, but certainly not consistent." We assume, strictly for purposes of this decision, that the trial court intended to find that Christina had established the visitation prong of the exception. We make this

assumption because, for the reasons discussed below, it is clear that there is substantial evidence to support the trial court's findings that the bond between Christina and the children "does not rise to the level of a parent/child bond," and that there is not "a parent bond in this case as between the children and the mother which would make termination of parental rights detrimental to the children and/or which would outweigh the benefits of adoption."

To begin with, as the trial court noted at the section 366.26 hearing, the children were bonded to their caregivers and referred to them as their parents. The caregivers had been providing for the children's daily needs for approximately 21 months at the time of the section 366.26 hearing, had been granted de facto parent status, were committed to adopting the children, and were completing their adoptive home study as of the time of the filing of the December 2015 section 366.26 report. J.R. and A.R.'s stipulated testimony indicated that they wanted to be adopted by their foster family.

In addition, there is considerable evidence in the record, apart from that specifically mentioned by the trial court, that supports the court's finding that there was not a parent/child bond between Christina and the children. Specifically, the record reflects that Christina faced serious challenges that had impeded her ability to parent. She had substance abuse problems, had been involved in abusive relationships, had recently been incarcerated, was living in a residential treatment facility for alcohol

and substance abusing women, and had lost her job, among other issues.⁷ In addition, her parental rights to another child had been terminated prior to these dependency proceedings.

In discussing her visitation history, the Agency reported that Christina would occasionally display behaviors that reflected the challenges she faced, such as "throw[ing] herself on the floor while crying in the presence of the children." Further, while Christina is correct in noting that there is evidence in the record that her children loved her, and that she assumed a positive parental role with the children during some of her visits, there was also evidence that Christina's inconsistency in assuming a parental role caused the children significant emotional distress.

Further, as the trial court also noted, there is evidence in the record, with respect to each child, that terminating Christina's parental rights would not outweigh the benefits of adoption. With respect to J.R., there is evidence in the record to support the court's finding that J.R. was "parentified," meaning that she had assumed the role of the parent, and that she is in need of parents whose stability and parental ability would allow her to be a child. During the bonding study, A.R. expressed a

⁷ We are not persuaded by Christina's argument in reply that the Agency's "focus on mother's shortcomings as a parent is misguided," on the ground that, at a section 366.26 hearing, the court does not "consider the parent's circumstances at the hearing because neither the children's return nor reinstatement of reunification services are at issue." Clearly, a parent's alleged "shortcomings" are relevant to determining whether the beneficial relationship exception applies (see, e.g., *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1302 [trial court "could properly focus on the mother's unresolved substance addiction issues," in determining whether the beneficial relationship exception applied]), as Christina implicitly acknowledges elsewhere in her brief by arguing that "mother was a good parent."

strong desire to have a father,⁸ which, the trial court noted, adoption by his current caregivers would provide. Finally, as the trial court observed, Al.R. is a "young child," who "deserves that permanence and stability that adoption provides."

In addition, the bonding report supported a finding that the children were doing well in their placement and did not indicate that severing Christina's parental rights would be so detrimental as to outweigh the benefits of adoption with respect to any of the children. Further, the CASA's report summarized the children's history and current placement and concluded, "adoption would be in the best interest of [the children] as it would provide a stable foundation and consistent routine for the children." In light of this evidence, we conclude that there is clearly substantial evidence to support the trial court's finding that the beneficial parent-child relationship exception did not apply.

Accordingly, we conclude that the trial court did not err when it found that the beneficial parent-child relationship exception does not apply to preclude the termination of Christina's parental rights.

⁸ The bonding study report stated that, when told by Christina that his biological father was out of the country, A.R. cried "uncontrollably," and stated repeatedly, "I want a dad."

IV.

DISPOSITION

The judgment terminating Christina's parental rights is affirmed.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.